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10 JOHN FORD EPPS  
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8 UNITED STATES DISTRICT COURT  
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10 DISTRICT OF NEVADA

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12 UNITED STATES OF AMERICA,  
13 Plaintiff,

14 v. CASE NO. 2:16-CR-00291-GMN-PAL

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16 JOHN FORD EPPS,  
17 Defendant.

18 MOTION AND ORDER FOR LEAVE TO  
19 OBTAIN A PRE-PLEA PRESENTENCE  
20 REPORT

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22 Comes now the Defendant JOHN FORD EPPS, by and through his counsel of record, John  
23 George, Esq., and respectfully moves this Court for an order directing the United States Probation  
24 Office to prepare a Pre-Plea Presentence Report for the limited purpose of determining Mr.Epps'  
25 criminal history. In support hereof, Mr. Epps represents that the purpose of the report would be  
to assist Defendant Epps in determining the potential consequences of entering a plea and to  
confirm that he has properly recollected his criminal history. Preparation of the requested report  
would assist Defendant Epps and counsel in this matter.

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27 MEMORANDUM OF POINTS AND AUTHORITIES

28 The preparation and use of a presentence reports is governed by 18 U.S.C. § 3552 and  
Rule 32 of the Federal Rules of Criminal Procedure. The text of Subparagraph (e) to Rule 32

1 lends support for the position that Rule 32 permits the preparation of a pre-plea presentence report  
 2 prior to a plea agreement. Rule 32(e)(1) reads as follows:

3                   (e) Disclosing the Report and Recommendation.

4                   (1) Time to Disclose. Unless the defendant has consented in writing, the probation  
 5                   officer must not submit a presentence report to the court or disclose its contents  
 6                   to anyone until the defendant has pleaded guilty or nolo contendere, or has  
 7                   been found guilty.

8 According to its language, Subparagraph (e)(1) protects against non-consensual disclosure of a  
 9 presentence report to a court or to anyone else prior to a defendant's plea of guilty or a finding of  
 10 guilt. The protection against pre-plea disclosure necessarily suggests that the creation of a pre-  
 11 plea presentence report is permitted.

12                  The pertinent portion of Rule 32 has been modified on several occasions. The legislative  
 13 history to the changes is informative. The 1989 amendments to Rule 32(c)(1) made it the  
 14 functional equivalent of current Rule 32(e)(1). The Advisory Committee Notes to the 1989  
 15 Amendments indicated the purpose of the provision:

16                  In amending [then] subdivision (c)(1), the Committee conformed the rule to the  
 17 current practice in some courts: i.e., to permit the defendant and the prosecutor to  
 18 see a presentence report prior to a plea of guilty if the court, with written consent  
 19 of the defendant, receives the report at that time. The amendment permits, but does  
 20 not require, disclosure of the report with the written consent of the defendant.

21                  Fed. R. Civ. P. 32, Advisory Committee Notes, 1989 Amendments.

22                  This history indicates that the probation department, under some circumstances, may  
 23 prepare a presentence report prior to a plea of guilty. This interpretation also gives meaning to  
 24 Rule 32(e)(1), which otherwise makes no sense. Where such a report is prepared, probation may  
 25 disclose it to the government and defendant and with consent to the court, prior to a plea of guilty.  
 26 In this manner, a defendant can obtain critical information upon which to decide whether to enter  
 27 into a plea negotiation.

28                  Defendant Epps is contemplating a plea offer extended by the government in this matter.  
 29 There is some urgency in this request as Defendant Epps must decide pretty soon. Material to this  
 30 decision is the determination as to his criminal history.

1        It is true that the Court may not participate in plea discussions, nor may the Court force  
2 Defendant Epps to submit to an interview with probation in violation of his 5th Amendment right  
3 against self-incrimination. Similarly, the Court may not force the government to reveal its  
4 evidence at an earlier stage than might otherwise be required. However, the Court does have the  
5 discretion to order the probation office to prepare a criminal history of Defendant Epps. The  
6 compilation of such a criminal history would serve the ends of justice and would not be unduly  
7 burdensome under the circumstances. It would not violate Defendant Epps' 5<sup>th</sup> Amendment rights  
8 or force the Government to reveal additional evidence. Defendant Epps' criminal history is a  
9 matter of public record and its impact upon sentencing is ordinarily fairly straightforward.  
10 Therefore, the compilation of such information prior to a guilty plea, and upon specific request by  
11 the defendant, would not give rise to concerns that the Court is improperly participating in plea  
12 negotiations.

13        For the foregoing reasons, Defendant Epps moves this Court to order the United States  
14 Probation Office to conduct a pre-plea presentence investigation for the limited purpose of  
15 determining Defendant Epps' criminal history.

16        Dated this 7<sup>th</sup> day of September, 2017.

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*/s/John George*  
JOHN GEORGE, ESQ.  
Nevada Bar No. 12380  
Counsel for John Ford Epps

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JOHN FORD EPPS

7 UNITED STATES DISTRICT COURT  
8 DISTRICT OF NEVADA

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10 UNITED STATES OF AMERICA,  
11 Plaintiff,  
12 v.  
13 JOHN FORD EPPS  
14 Defendant.

Case No. 2:16-CR-00291-GMN-PAL

**ORDER ON MOTION FOR LEAVE TO  
OBTAIN A PRE-PLEA PRESENTENCE  
REPORT**

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17 Defendant JOHN FORD EPPS seeks leave for the preparation of a pre-plea presentence  
18 report for the limited purpose of determining Mr. Epps' criminal history to assist in finalizing the  
19 parties' plea negotiations. The compilation of such a criminal history would serve the ends of  
20 justice and would not be unduly burdensome under the circumstances.

21 Accordingly, and for the foregoing reasons,

22 IT IS HEREBY ORDERED that Defendant John Ford Epps Motion for a Pre-Plea  
23 Presentence Report for a determination of criminal history is GRANTED.

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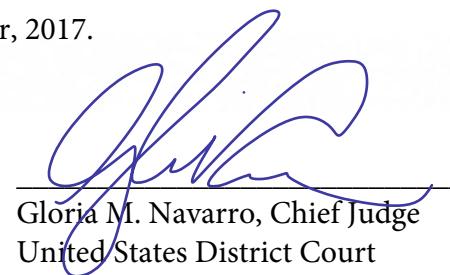
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**IT IS FURTHER ORDERED** that the United States Probation Office shall prepare and  
provide to the Court by no later than November 8, 2017, a Pre-Plea Presentence Investigation  
Report with the guideline calculation requested for Defendant John Ford Epps's criminal history  
only.

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7      **DATED** this 11 day of September, 2017.  
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Gloria M. Navarro, Chief Judge  
United States District Court